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DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

2101 L Street NW • Washington, DC 20037-1526

Tel (202) 785-9700 • Fax (202) 887-0689

Writer's Direct Dial: (202) 828-2236

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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NOTICE OF ORAL EX PARTE
COMMUNICATION

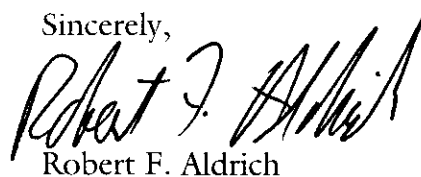
Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., TW-A325
Washington, DC 20554

Re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128; Colorado Payphone Association Petition for Reconsideration re Retroactive Adjustment of Second Report and Order Period Compensation; Retroactive Adjustment of Interim Compensation

Dear Ms. Salas:

On January 22, 2002, Vince Sandusky, President of the American Public Communications Council ("APCC"), and Albert H. Kramer and Robert F. Aldrich, its attorneys, had a teleconference with Sam Feder, advisor to Commissioner Kevin Martin. We discussed APCC's views of record on the matters pending in the above-referenced dockets. The enclosed document was handed out at the meeting.

Sincerely,



Robert F. Aldrich

Enclosure
cc: Sam Feder

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1177 Avenue of the Americas • 41st Floor • New York, New York 10036-2714

Tel (212) 835-1400 • Fax (212) 997-9880

<http://www.dsmo.com>

RETROACTIVE COMPENSATION ADJUSTMENTS

Ex Parte Presentation CC Docket No. 96-128 American Public Communications Council

I. THE AMOUNT OF ANY INTERIM PERIOD COMPENSATION ADJUSTMENTS CANNOT BE DECIDED IN ISOLATION

- ◆ The Commission has linked retroactive compensation adjustments for the Interim Period (November 1996 – October 1997) and the Second Report and Order Period (October 1997 – April 1999).
- ◆ For both periods, retroactive post-remand compensation adjustments are not automatic: they are to be ordered only if the equities so require. *Towns of Concord v. FERC*, 955 F.2d 67, 75-76 (D.C. Cir. 1991).
- ◆ The Commission has made no final ruling to date on retroactive adjustments for the Interim Period *or* the Second Report and Order Period.
 - As to the Interim Period, the FCC has reached only “tentative” conclusions to date.
 - As to the Second Report and Order period, the FCC has yet to decide the Colorado Payphone Association’s Petition for Partial Reconsideration of the *Third Report and Order*, filed April 21, 1999, which requests the Commission to reconsider its decision to require retroactive adjustments for independent PSPs for the Second Report and Order Period.

II. THE EQUITIES DO NOT SUPPORT RETROACTIVE APPLICATION OF THE \$.24 (\$.238) RATE TO INDEPENDENT PSPS

A. Independent PSPs Have Been Undercompensated for IXC Use of Their Payphones Since 1992

- ◆ The FCC erroneously determined that it lacked statutory authority to prescribe compensation for subscriber 800 calls during the period 1992-96.
- ◆ For more than four years immediately prior to the compensation periods under review, interexchange carriers

("IXCs") paid no compensation to independent PSPs for subscriber 800 calls.

B. Independent PSPs' actual compensation in the Second Report and Order Period was far below the minimum level established by the Commission in the Third Report and Order

- ◆ The current compensation rate (\$.238 per call), which would be retroactively applied, is based on the Commission's finding that a *marginal* payphone has 439 calls per month, of which 142 are compensable dial-around calls. The \$.238 rate was set to recover relevant portions of the fixed cost of a marginal payphone.
- ◆ The Commission found that call volume is higher at *average* payphones than at *marginal* payphones – at independent payphones about 159 compensable dial-around calls per month.
- ◆ Actual compensation payments to independent PSPs in 1998 were made on an *average* of about 109 calls per payphone per month, 68.6% of the 159 compensable calls at an average independent payphone.
- ◆ Reasonably applying the paid-call percentage for *average* independent payphones (68.6%) to *marginal* payphones' call volume of 142 calls per month yields a 1998 paid call volume for marginal payphones of about 97 calls per payphone per month, 45 calls below the level necessary to fully recover marginal payphone costs.

C. Even at the \$.284 rate, independent PSPs were undercompensated in 1998

- ◆ The *Third Report and Order* intended that marginal payphones would recover \$33.80/phone/month dial-around compensation (\$.238/call x 142 calls = \$33.80).
- ◆ As shown above, marginal payphones were actually compensated for only 97 calls per month in 1998, for total compensation of \$27.55 per payphone per month (at the 1998 rate of \$.284) -- \$6.25 short of the \$33.80 contemplated by the *Third Report and Order*.

D. Retroactively applying the \$.238 rate would exacerbate the undercompensation of independent PSPs

- ◆ If the Commission applies the current \$.238 rate retroactively to 1998 call counts, as proposed, marginal payphones' compensation would be reduced to \$23.09 per payphone per month -- \$10.71 short of the \$33.80 contemplated by the *Third Report and Order*.
- ◆ To ensure the amount of cost recovery intended by the *Third Report and Order*, adjusted compensation for the Interim Period and Second Report and Order Period, if based on actual 1998 paid call volumes, would have to be set at \$.348 per call ($\$33.80/97 = \$.348$).
- ◆ Retroactive compensation adjustments are not warranted, with respect to independent payphones, for the Interim Period *or* the Second Report and Order Period.

III. THE RBOCS' INTERIM PERIOD COMPENSATION PROPOSAL IS UNWORKABLE AND UNFAIR TO INDEPENDENT PSPS

- ◆ The RBOCs recommend using actual 1998 per-call compensation payments (recalculated at the \$.24 – actually \$.238 for retroactivity purposes -- rate) as the basis for adjusting PSPs' Interim Period compensation.
- ◆ Most IXC*s as well as* independent PSPs oppose the RBOC proposal.
- ◆ 1998 compensation payments are wholly unreliable as indicators of independents' dial-around call volumes, due to the massive problems with FLEX ANI compensation and resellers.
- ◆ Translating payments from one period to another would generate huge administrative problems.

IV. THE COMMISSION COULD REASONABLY REACH A DIFFERENT RESULT WITH RESPECT TO ILEC PAYPHONES, WHICH APPEAR TO BE DIFFERENTLY SITUATED

- ◆ ILECs were not undercompensated during the 1992-96 period.
- ◆ ILECs were not eligible for, and did not collect, compensation payments during the first five months of the Interim Period.

- ◆ Most ILECs did not experience the same call tracking problems as independent PSPs in 1998, because most lines connected to ILEC payphones did not require FLEX ANI in order to transmit payphone call identifiers to IXCs.
- ◆ Retroactive application of the \$.238 rate would bring the prior-period compensation of ILECs – but not independent PSPs – closer to cost recovery levels.